

Appeal No: VA19/5/0550

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Real Bars Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2080124, Hotel at 1A Ferrybank South Wexford Co. Wexford

B E F O R E

Hugh Markey - FSCSI, FRICS

Caroline Murphy - BL

Liam Daly - MSCSI, MRICS

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €192,200.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: *"The subject property forms part of Real Bars Ltd for accounting purposes. The subject is trading at a minimal profit on paper. Even removing the subject's loans liabilities, the divisible balance would not even justify the valuation applied by the commissioner's shortened R&E. The key to the properties success is its food sales - and an enormous amount of goodwill over decades is built up in this trade. A hotel business which is made up of 65% food is very unstable and very susceptible to fluctuation due to the loss of chefs or the loss of clientele through serving food below standards set. The hypothetical tenant would have to be an expert in food to be able to run the business this way, rather than an expert in the hotel trade. Indeed, a chain hotel group would run a mile from this property, as it does not have sufficient rooms to guarantee stable income. If the property was vacant and to let, with no goodwill, it is very unlikely that the food*

trade could be more than 50% of the entire operation - i.e. maximum sustainable food FMT lies in the region of €1.2m. Even at this, the business is extremely food heavy."

1.3 The amount the Appellant considered ought to have been determined as being the valuation of the subject property was revised from €157,200 as stated in the Notice of Appeal to €131,200 at the hearing.

2. REVALUATION HISTORY

2.1 On the 29th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €245,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €192,200.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €192,200.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2019.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing on the 25th day of February, 2022. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) Ba. (Mod) and the Respondent was represented by Mr. David O'Brien MSCSI MRICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and Précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his Précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property is located at Ferrybank, Wexford town. It is located approximately 1km from the centre of the town on the northern side of the mouth of the Slaney River.

4.3 The subject property is a 23 bed, 3 star hotel with function room, restaurant and bar.

4.4. The agreed total gross floor areas of the subject property are 2,720 sqm.

4.5 It is understood that the property is freehold.

4.6 The agreed turnover for the years ending 30/09/15 to 30/09/18 [In Appendix n/a to public].

5. ISSUES

5.1 The sole issue before the Tribunal is Quantum.

6. RELEVANT STATUTORY PROVISIONS

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

6.3 Section 19(5) of the Act inserted by section 7 of the Valuation (Amendment) Act 2015 requires the valuation list to be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates and to achieve both (insofar as is reasonably practicable) (i) correctness of value, and (ii) equity and uniformity of value between properties on the list and so that the value of each property on the list is relative to the value of other properties comparable to that property on the list or, if no such comparable properties exist, is relative to the value of other properties on the list in that rating authority area.

7. APPELLANT’S CASE

7.1 Mr. Halpin described the subject property as a 23 bed, 3 star hotel with function room, bar and restaurant located about 1 kilometre from Wexford town. He said that it is the Appellant’s case that the subject property is overtrading, which is down to the goodwill of the occupiers. The subject property has amassed a very substantial food trade through exceptional service, over the past 20 years. He said the business trades at 65% food and that this is completely exceptional in the hotel industry and paints the subject more as a restaurant with rooms than a hotel. The food trade in the subject is not replicated in the other hotels and is exceptional.

7.2 At 23 beds, the subject property is the second smallest hotel in Wexford town and only truly comparable to The Farmer’s Kitchen which has 21 beds and which also has a very high percentage of its sales from food. The Farmer’s Kitchen was assessed by the Respondent at €108,400 NAV.

7.3 Mr. Halpin analysed the other hotels in Wexford town by reference to the NAV per bedroom in order to contextualise the subject property’s value as they did not have access to all the Fair Maintainable Trade (FMT) information of the properties. Mr. Halpin said that from that analysis it is obvious that the subject property is assessed at a 60% premium to the only direct comparison and all of the 4 star hotels. The subject property is assessed at a 100% premium to the average 3 star accommodation. He said that regardless of the star rating, there seems to be a convergence of values at €5,000 per bed.

7.4. Mr. Halpin also presented analysis of hotels, some of which his firm have dealt with across the County of Wexford, which he said now form the settled tone. This range is almost identical to that found in Wexford town and the subject property's NAV is vastly in excess of the range.

7.5 Mr. Halpin said to the Appellant's knowledge, there has not been a decision of the Tribunal based on exceptional operation of food within a hotel context. The Tribunal have dealt with the issue on multiple occasions in regards to pubs, and referred to VA17/5/075, VA17/5/118, VA17/5/243 and VA17/5/579. The methodology has been summarised by the Tribunal in a number of judgments and he submitted it is best summarised in VA17/5/579. He contended that the Appellants drink:food ratio is 1:3 and have maintained this ratio in their valuation of the subject property.

7.6 Mr. Halpin said that the Commissioner's schematic is a shortened R&E basis, namely, rooms & conference – 10% of FMT, drink sales – 7% of FMT, food sales – 5% of FMT, leisure & sundry – 15% of FMT. The schematic is designed to be reflective of a full R&E basis. However, in the case of the subject, it is fair to suggest that the shortened R&E is not reflective of a full R&E basis. He said that that is not to say that the two must align exactly, but the full R&E lends significant weight to the Appellant's argument that the FMT of the food and the drink should be adjusted to more properly reflect its true value to the hypothetical tenant.

7.7 Mr. Halpin said the assessment of the subject property on a rate per bed basis was €8,356 which is far higher than any other in Wexford town or any other that the Appellant is aware of across Wexford County. In short, the Appellant believes that their food trade for 23 beds is likely similar to others in the town and county with 80-100 beds. Therefore, it is clearly exceptional.

7.8 Mr. Halpin's proposed valuation was in line with the four star hotels in the town. Mr. Halpin put forward a Shortened R&E and proposed a NAV of €131,200 [In Appendix n/a to public]. He referred to the full R&E set out on page 30 of his Précis and submitted an amended document. He said the average of the four years was €129,058 and the highest year (2015) on the most aggressive read of the R&E was still 10 percent out from what the Commissioner assessed.

7.9 Mr. Halpin relied on the following comparisons with the FMT information available to him [In Appendix n/a to public] and commented on the FMT information in the Respondent's Précis.

1. **PN2009174** Farmers Kitchen, Rosslare Road, Drinagh, Co. Wexford. This was the most comparable property to the subject with almost an identical number of rooms. He suggested that if the hypothetical tenant could rent a 3 star, 21 bed, hotel for €108,400pa, there is simply no way that the subject property, as a 23 bed 3 star hotel could rent for almost €84,000 more per annum. Moreover, the difference between this property and the subject is predominantly goodwill. He said this property was only purchased in 2012 and therefore there was no legacy goodwill because it had been closed prior. The NAV per bed basis was €5,162 for this property.

2. **PN2082403** The Maldron Hotel, Rosslare Road, Wexford. This property is a modern purpose built 3 star hotel with 108 rooms located on the N25 ring road. The NAV per bed is amongst the lowest in the county at €2,944.

3. **PN 2104654** The Clayton (White's), North Main Street, Wexford Town. This is the largest hotel in Wexford Town and the most central. The level per bed here is €4,850 and is indicative of the broader level for 4 star hotels across the county and significantly less than the subject property. He considered it one of the best hotels in Wexford town.

4. **PN: 2102963:** The Talbot Hotel, Trinity Street, Wexford Town. This is a town centre hotel, albeit less well located than the Clayton Hotel. The level per room is €5,207 and consistent with others of similar star rating. He said the room and food trade about match.

5. **PN2009339:** The Ferrycarrig Hotel, Ferrycarrig, Wexford Town. This property is located just off the N11, with views over the water and is approximately 3kms from the centre of the town. It is well known for wedding and tourist trade. It is the most valuable of the four-star hotels in Wexford on a per bed basis at €5,235. He said the food trade beats the room trade.

He referred to comparisons outside of Wexford town, as follows:

6. **PN2009398:** The Coast, Rosslare Strand Hotel, Strand Rd, Rosslare, Co. Wexford. This property is a 32 bed hotel with associated bar, restaurant and function room. It was subject to representations by Eamonn Halpin & Co. Ltd. Rosslare is a more seasonal location than Wexford town, but this is reflected in the NAV/bed, which is higher in the Appellant's appraisal of the subject property.

7. **PN2100539:** The Kennedy Boutique Hotel, 19 The Quay, New Ross, Co. Wexford. The property is located in the centre of New Ross. It was purchased for €208,000 in July 2017 and renovated extensively prior to opening in Summer 2018. Food is outside the expected range at 59% of FMT but this can be explained by the fact that it is in the centre of the town.

8. **PN2008919:** The Brandon House Hotel & Spa, Southknock, New Ross, Co. Wexford. The largest hotel in New Ross. There is a significant reliance on food, but not beyond the expected range (approx. 40% food).

9. **PN2166274:** The Ashdown Park Hotel & Leisure Club, The Coach Road, Gorey, Co. Wexford. This property was represented on appeal by Eamon Halpin & Co. Ltd prior to revaluation. He said it was a good quality 4 star hotel. He said this property is a similar distance from Gorey as the subject is to Wexford but it is out of the town.

10. **PN2009304:** The Coast Kilmore Quay Hotel, Kilmore Quay, Wexford. This comparison was represented by Eamonn Halpin & Co. Ltd. prior to revaluation. He said it was a good quality 3 star hotel but with a low number of rooms. Tentative evidence suggests that where a hotel has a low number of rooms such that trade is not primarily driven by room sales, that the rate per room is equivalent to that of properties one star higher. In other words, the room rate here is equivalent to that of a large four star premises as opposed to a large three star premises. He said this is inferior to the subject in every way but it is a smaller hotel too.

7.10 Under cross examination, Mr. Halpin accepted that the Farmers Kitchen was approx. 4km from the town and that the subject property was in a better location than the Farmers Kitchen. Referring to the food FMT in the Farmers Kitchen, it was put to him that property only had capacity for 60 people in the function room, unlike the subject property and that it was not unreasonable that it would have such a high reliance on the food trade. In response, Mr. Halpin referred to the food trade in each and said there was a jump in the food trade but accepted that small hotels can have a reliance on food. It was put to him that it was not accurate to say that for an additional €84,000pa that they just get two extra bedrooms; it is better located and has a larger function room ability and would be able to generate through the FMT and stable turnover additional turnover justifying the payment of an additional €84,000pa. In response, Mr. Halpin accepted that they would get a slightly better located hotel, the two extra rooms and a slightly

larger function area but did not accept that the hypothetical tenant would be able to generate the extra turnover than the current occupier that could justify the €84,000pa. When it was put to him that the Maldron does not have a function room for weddings, unlike the subject property that has a function room for capacity for a maximum of 340 people and which holds approximately 40-44 weddings per year, Mr. Halpin said the Maldron has a bar and restaurant and that it was the occupier or hypothetical tenant's choice to run the hotel as they saw fit. He accepted that it currently doesn't have a function room but said the Maldron built this hotel to suit their own needs. When asked, he accepted that Wexford town was a tourist location and had a bigger population than New Ross. When it was put to him that by comparison to the Kennedy Boutique and the Farmers Kitchen, the food trade in the subject was not exceptional in isolation, he agreed by those comparisons alone but said in regard to the general basket of comparisons, the food FMT does not normally get to those levels in the generality of normal food, room, drinks offering, which was echoed throughout the comparisons in Wexford town.

8. RESPONDENT'S CASE

8.1 Mr. O'Brien noted the subject property was within 800 metres from the town and was within the main urban area.

8.2 Mr. O'Brien described the subject property as a hotel, mainly two storey with 23 bedrooms. The bedrooms are split over the ground and first floors. Also located on the ground floor is the Bar / Restaurant with capacity for 120 – 135 people. There is also a breakfast room and restaurant which can be used for private hire. The Ballroom is located on the first floor. There is a separate bar within the Ballroom and the Ballroom has an ability to be flexible to the requirements of each function. The maximum capacity is 340 for Theatre Style concerts; 290 Capacity for trestle dinner table style and 190 Capacity for round table style. The conference room is used mainly for weddings. Packages range from €38 to €48 pps incl. VAT. To the front of the property there are 14 car spaces but the hotel is also located beside a Local Authority controlled car park. At the effective date there were no barriers installed and car parking was free of charge.

8.3 Mr. O'Brien said the Appellant is seeking an NAV relative to the revenue the property could actually achieve rather than reflecting the value of the property based on a level of turnover generated due to the goodwill built by the actual occupier due to his business acumen. It was his opinion that the Appellant had not provided proof that a hypothetical tenant could not generate revenues similar to those which are currently being generated by the actual occupier:-

8.4 Mr. O'Brien referred to an extract from the guidance note entitled "The Receipts and Expenditure Method of Valuation for Non Domestic Rating", para. 5.1 sets out general considerations around the occupation of a property "is that of a hypothetical tenant who is generally assumed to occupy the property for which it is actually used. The nature of such occupation may result in the need for adjustment of the facts relating to the actual occupation...". Para. 5.18 of the Guidance Note goes on to suggest "...that the hypothetical tenant will not be materially different in character from the actual occupier and that the nature of the undertaking will be similar". In light of the above, Mr. O'Brien said that a hypothetical tenant will not be materially different to the actual occupier of the subject property.

8.5 The subject property, with the benefit of a significant function room, hosts approximately 44 weddings per annum. Wedding costs are based on the food package chosen and there is no reason

a hypothetical tenant could not sustain a similar number of weddings; therefore sustaining similar levels of turnover currently enjoyed by the actual tenant.

8.6 In his opinion, the revenues are not driven by any goodwill that may be attached as claimed by the Appellant, but rather by the location of the subject property and the ability to provide certain services at the subject property.

8.7 Mr. O'Brien relied on 5 NAV comparisons. These properties were valued with the benefit of financial information and no appeals were made to the Valuation Tribunal in these comparisons. In relation to the rate per room basis referred to by the Appellant, he said if the properties were only providing accommodation then the subject property would stand out like a sore thumb but when everything is taken into consideration they are not only providing accommodation rather a number of offerings and the NAV as a proportion of FMT is the best metric to identify the relative valuation between the properties. He introduced the following NAV comparisons with financial information [In Appendix n/a to public] which were also relied upon by the Appellant and commented on the 5 properties outside Wexford town relied on by the Appellant.

1. **PN2009174** The Farmers Kitchen is a 21-bedroom hotel with a small function room. He said this was the Appellant's main comparison and also his. This comparison is located approximately 4 kms from the town centre, unlike the subject property. Although the property has similar facilities to the subject, this comparison only has a capacity for 60 people for functions. The additional value attributed to the subject is not attributed to goodwill as the Appellant contends. He said it could be attributed to the location and characteristics of the property and the ability to provide a level of service and revenue in that location. The drink to food trade in Comparison 1 is 1: 3.43 - NAV as a proportion of FMT is 6.26% The Appellant representative made Representations on this property to the revaluation manager within which it was contended the food trade was 65% of business and very unstable and susceptible to fluctuations. There was no appeal to the Tribunal. There is no evidence to support the contention the subject property is excessively valued, relative to Comparison 1.

2. **PN2082403** Hanford Commercial Ltd., t/a Maldron Hotel, Ballindinas, Wexford, Co. Wexford a 108-bedroom hotel with leisure centre. This comparison is located approximately 4 kms from the town centre, unlike the subject. This comparison has different facilities to that offered in the subject property. It does not have a function room and cannot offer the type of weddings that the subject property can. The additional value attributed to the subject property is not attributed to goodwill as the Appellant contends. The value of the subject is based on the location of the subject and the facilities offered by the subject property. The drink to food trade in comparison 2 is 1: 2.14 - NAV as a proportion of FMT is 8.77%.

3. **PN2009339** Ferrycarrig Hotel Ltd., t/a Ferrycarrig Hotel, Ferrycarrig, Crossabeg, Co. Wexford is a four star 102 bedroom hotel with leisure centre. This comparison is located approximately 3km from the subject property. This comparison has different facilities to that offered in the subject. It has a function room and a Leisure Centre. The drink to food trade in comparison 5 is 1: 1.95 - NAV as a proportion of FMT is 7.95%.

4. **PN2104654** Amelin Commercial Ltd t/a Clayton White's Hotel is a 4 star 160 bedroom hotel with a leisure centre. This comparison is located approximately 1 km from the subject on the opposite side of Wexford Bridge. This property has different facilities to that offered in the subject

property. It has a function room with capacity for 350, leisure centre and underground car park. The drink to food trade in this property is 1: 1.57 - NAV as a proportion of FMT is 8.59%.

5. **PN2102963** Talbot Hotel Ltd t/a Talbot Hotel, Paul Quay, Wexford, Co. Wexford is a 4 star 107 bedroom hotel with leisure centre. This comparison is located along Wexford Quay approximately 2km from the subject. This comparison has different facilities to that offered in the subject. It has a function room with capacity for 320 and a leisure centre. The drink to food trade in comparison 4 is 1: 2.21. The NAV as a proportion of FMT is 7.74%.

8.8 Mr. O'Brien said the Appellant's Comparisons 6 to 10 are located outside Wexford Borough District and are less comparable to the subject. In relation to the Appellant's Comparison 7 **PN2100539**, he commented the Appellant claims the FMT applied to food is outside the expected 59% but that this can be explained away by the fact it is in the town centre. The subject property also benefits from being within the town centre of Wexford Borough, with a larger population than New Ross and the Appellant's justification for the food trade in this comparison could as easily be applied to the food trade in the subject property.

8.9 In relation to the Appellant's Comparison 8 **PN2008919**, he said as part of the Representations it was submitted by the same representative in the subject appeal "the location of this property is very moderate on the outskirts of New Ross, which is not a recognized tourist destination in and of itself" and that the subject property is located within a recognized tourist destination, Wexford Town.

8.10 Regarding the Appellant's Comparison 9 **PN216627** and the Appellant's Comparison 10 **PN2009304** and in relation to NAV relationship to FMT, the subject property is lower than both of those comparisons and it is reflective of what services are being provided in the comparisons and the subject property.

8.11 Mr. O'Brien said the subject was not exceptional and that there were other properties heavily reliant on the food trade and the Farmers Kitchen, which was a common comparison, to both parties was key and an adjustment to the valuation on the subject property would render it out of line with the other comparable properties on the valuation list.

8.12 Mr. O'Brien referred to the four Valuation Tribunal judgments and calculations submitted in the Appellant's précis. In the Zodiac decision, the Valuation Tribunal division, in making their decision, were 'persuaded by evidence provided by the appellant that the sales ratio of food to drink of 1:4 is exceptional and that some of this success must be attributed to the goodwill or acumen of the operator of the subject property'. The evidence was not there in the subject's case to suggest that it is exceptional.

8.13 In relation to the scheme, he said financial information was supplied prior to the issuing of the proposed certificate in 14 out of a total of 38 hotels in Wexford with 4 of 6 hotels in Wexford Borough (Wexford Town) supplying financial information for consideration. Financial information was received on a further 15 hotels during the representations period, with no financial information being received for 8 remaining hotels. There is no rental evidence available on hotel properties in the Wexford town area, wherein the subject property is located. The valuation scheme adopted for hotel properties in Wexford is the same as the scheme adopted for hotel properties valued as part of Revaluation 2017 project where 101 hotels were valued. All were either accepted or agreed with no outstanding Valuation Tribunal appeals.

8.14 The valuation scheme for Revaluation 2017 was developed from detailed analysis of market transactions combined with the analysis of financial information. The results of this analysis (including the carrying out of full receipts and expenditure valuations) lead the Commissioner to adopt the shortened method of valuation. This approach ensures correctness, equity and uniformity for all ratepayers as prescribed in Section 19(5).

8.15 The method entails applying percentages to various income streams to arrive at the net annual value. Any information submitted did not support amending the valuation scheme adopted for hotels as part of Reval 2017. The valuation scheme is applicable to all hotels in Wexford and is as follows; rooms: 10%, conference/room Hire:10%, beverage: 5%, leisure & spa:15% and sundry: 15% and these percentages were deemed appropriate to apply to the Fair Maintainable Trade (FMT) in each property.

8.16 It was Mr. O'Brien's opinion that the Appellant was not disputing the scheme of valuation and the percentage applied to Fair Maintainable Trade (FMT). The scheme has been accepted by the other hotels in the urban district of Wexford, in that his main comparisons have not been appealed to the Valuation Tribunal.

8.17 Mr. O'Brien said he had calculated the FMT per available room estimated for comparisons to illustrate relativity between the subject and comparisons. Rooms are available, in the subject, for occupation 363 days per annum. Total number of rooms available amounted to €8,349 per room. The FMT per available room is relative to total number of rooms available and FMT applied to accommodation. He said he had adopted 363 days for each comparison [In Appendix n/a to public]. This was a reasonable approach as to how the subject property sat with the other comparisons and it was his contention that it sits reasonably well taking into account the location and the services available.

8.18 Mr. O'Brien concluded that the Appellant has not provided evidence to suggest the actual receipts are in excess of those that a reasonably efficient operator could expect to achieve because it is not possible to conclude the operator's management measures, policies and structures produces a higher level of trade than the hypothetical tenant might expect, and the turnover is not so far in excess of other comparable properties that it cannot be reasonably explained by the differences in locations or facilities available.

8.19 The valuation scheme is appropriate, and this is supported by the fact all other 6 hotels in Wexford Town have not been appealed to the Valuation Tribunal. 5 of the 6 hotels were represented by property professionals at Representations stage. This, in his opinion illustrates the "settled tone" referred to by the Appellant. The Appellant is contending the subject property is valued by reference to unsustainable Fair Maintainable Trade. He referred to the full R&E set out on page 88 of his Précis and submitted an amended document [In Appendix n/a to public]. He asked the Tribunal to affirm the valuation of €192,200 as set out in the Valuation Certificate. [In Appendix n/a to public].

8.20 Under cross examination, Mr. O'Brien was asked whether it was unusual for a hotel, the size of the subject property to only have 14 car parking spaces. Mr. O'Brien answered he didn't know if it was unusual in that they have 14 spaces for 23 rooms and they had the use of the free car parking directly across the road to the property, he did not think it was impacting or a negative on the valuation. When it was put to him that the Appellant, as occupier and a hypothetical tenant, would not have control over the car parking across the road, rather he would get the building and

the 14 car parking spaces, he agreed with this but said the 14 spaces relative to the 23 rooms was not significant in his view.

8.21 When asked had he considered what number or at what point the food trade could be considered exceptional food trade, Mr. O'Brien said the tipping point was the NAV to FMT compared to all other properties on the list and if it seemed excessive when he stood back and looked. Mr. Halpin asked Mr. O'Brien if the Appellant was incorrect that there wasn't any exceptional operation at the subject property and the hypothetical occupier could run it as the actual occupier does as set out in the excerpt from the Guidance Note relied upon by the Respondent and put it to Mr. O'Brien as to where is the hypothetical tenant going to find the €192,200 to pay the rent. Particularly having regard to the R&E carried out by the parties where they cannot come up with the €192,200. Mr. O'Brien responded that the issue with the R&E was that the Appellant has the subject property and another property in Wexford town and they were working from management accounts on the subject property and he questioned certain aspects of the makeup of the costs and expenses and he said that neither party had interrogated these aspects. He further said that the ability to operate and generate a level of consistent trade from the subject property was clear and that there is not an actual occupier carrying out its everyday operations differently to what the hypothetical tenant would do and the FMT should be relatively similar to the revenues generated from the actual occupier. When it was put to him that he was relying on the R&E, he said that the R&E was one piece of the information relied on in arriving at the NAV, looking at everything altogether.

8.22 In answering a question from the Tribunal as to how he applied the information from the 14 properties where information was provided to arrive at a NAV for those where information was not provided, he said he arrived at the NAV on those properties by looking at the FMT and Revenue information they had on other properties and considered whether they were relative to those properties based on what they understand the property to be. He said he would attempt to put a hierarchy on hotels.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Wexford County Council.

10.2 The Tribunal considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant who contended for a revised NAV of €131,200 and Mr. O'Brien on behalf of the Respondent who sought confirmation of the valuation managers determination of €192,200.

10.3 The comparisons offered gave a general view of the hotel trade in Co. Wexford and were of assistance to the Tribunal. The Tribunal finds the 5 common comparisons located in Wexford town to be of the most assistance in determining the NAV of the subject property in terms of location. The Tribunal finds the common comparison, that of the Farmers Kitchen to be the most relevant and helpful comparison. This is due to its location, size and type of operation. Both

witnesses considered this their main comparison. The subject property has two additional rooms and a larger function room than the Farmers Kitchen, however the subject property has only 14 car parking spaces to facilitate 21 rooms. Evidence was given that at the relevant date, the hotel had the benefit of free car parking across the road. The Tribunal considers 14 spaces for 21 rooms to be a significant disadvantage to the property as the hypothetical tenant would not have control over the other car park that did not form part of the subject property and the usage of which could be withdrawn without any recourse. The Tribunal is cognisant of the fact that the availability of these remote spaces was not within the control of the occupier of the subject under appeal and there was no guarantee of their being available to patrons at any given time. The Tribunal is of the view that although the subject property is located in a better location than the Farmers Kitchen, that the turnover exceeds what a hypothetical tenant could hope to achieve and that the turnover achieved reflects the personal acumen and goodwill of the occupier. Furthermore, the 'upside-down' nature of the business with food sales outstripping those of rooms by a wide margin supports this view. This strongly suggests a high degree of personal business acumen and goodwill attaching to the operator of the business. When taking a stand back and look approach the Tribunal determines an appropriate adjustment is 25% of the turnover to arrive at a fair FMT to achieve a valuation that is correct and equitable so that the valuation of the subject property is relative to the value of other comparable properties on the valuation list in the rating authority area.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €167,200. The breakdown of the NAV calculation is set out at the Appendix D to this judgment [n/a to public]

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.